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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,520	02/14/2001	Geraldine Lerebour	2365-28	7537
23117	7590	07/01/2004		EXAMINER
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714				WELLS, LAUREN Q
			ART UNIT	PAPER NUMBER
				1617

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/782,520	LEREBOUR ET AL.
	Examiner Lauren Q Wells	Art Unit 1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 May 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 13-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 13-24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

Claims 13-24 are pending. The Amendment filed 5/6/04, amended claim 13.

### ***112 Rejection Maintained***

The rejection of claims 13-24 under 35 U.S.C. 112, 1<sup>st</sup> paragraph, is MAINTAINED for the reasons set forth in the Office Action mailed 11/6/03, and those found below.

Applicant argues, “one of ordinary skill in the art would, after reviewing the present application, be able to practice the claimed invention, without undue experimentation”. This argument is not persuasive. First, while Applicant has made this statement, Applicant has provided no evidence or scientific reasoning to substantiate this statement. Second, for the reasons stated in the previous Office Action, the instant specification is not enabled for a composition that does not require the presence of antibiotic, bacterial or fungicidal agents.

### ***102 Rejection Maintained***

The rejection of claims 13-24 under 35 U.S.C. 102(b) as being anticipated by Mougin et al. (5,851,517) is MAINTAINED for the reasons set forth in the Office Action mailed 11/6/03, and those found below.

Applicant argues, “The Applicants submit however that isopropyl palmitate and similar compounds are used in the cited document as part of a non-aqueous medium to protect the composition containing a dispersion of surface stabilized polymeric particles. The isopropyl palmitate is not described in the cited patent as being the active ingredient which provides the desired technical effect of the cited patent. . . The purpose of the cited patent is not to describe the use of a composition of a fatty substance free of carbohydrate units as recited in the presently claimed invention”. This argument is not persuasive. It is respectfully pointed out that a compound and its properties are inseparable. Thus, whether isopropyl palmitate is referred to as

the active ingredient, or whether the purpose is the same, is irrelevant. The cited art teaches the same methods of applying to the skin a composition comprising the same active ingredient in the same effective amount. Thus, the instant method is anticipated by the cited art.

The rejection of claims 13-24 under 35 U.S.C. 102(e) as being anticipated by Santor et al. (6,524,594) is MAINTAINED for the reasons set forth in the Office Action mailed 11/6/03, and those found below.

Applicant argues, "the presently claimed method of reducing the adhesion of microorganisms to the surface of the skin and/or the mucous membranes is not specifically or inherently taught by the cited patent". This argument is not persuasive. In the previous Office Action, it is specifically laid out how the cited art anticipates the instant claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

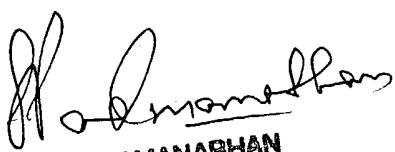
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is 571-272-0634. The examiner can normally be reached on M&R (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lqw



SREENI PADMANABHAN  
SUPERVISORY PATENT EXAMINER